Sentencing and Conventional Number Preferences

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In order to provide the criminal justice community with the best information on effective sentencing policy, the Wisconsin Sentencing Commission is continually seeking to improve its understanding of existing sentencing practices, including the difficult process whereby judges determine what forms the *right* sentence for each offense/offender. Commission staff regularly reviews the available literature for new work that may offer some insight into observed sentencing patterns in Wisconsin.

In *Sentencing and Society: International Perspectives*, Ashgate Publishing (2002), Brian Ostrom and Charles Ostrom asserted:

> Measurement matters. Measuring the severity of prison sentences is fundamental to analysing and interpreting sentencing practices in US courts. The issue is finding a measure of sentence severity that fits the actual decision–making practices of judges. . . .
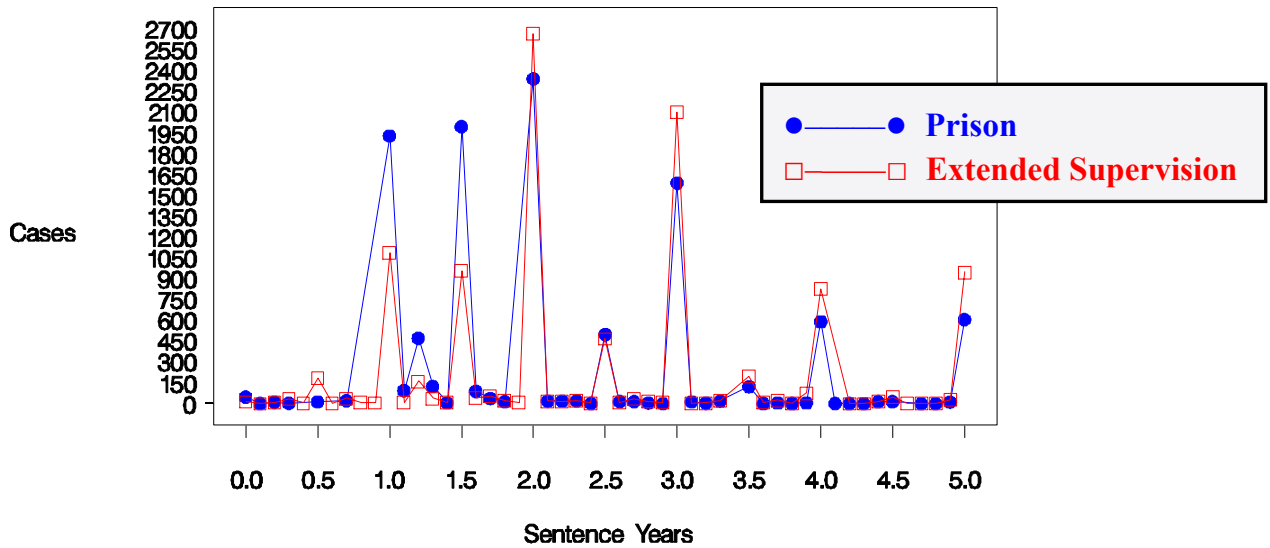>
> Actual sentence length may not be consistent with a continuous "scale of severity." Consider the distribution of prison sentences among 9,586 offenders convicted in the State of Michigan in 1995. Prison sentences range from one month to 480 months. Michigan judges are free to assign any term of days, months or years they wish. However, it is clear that a small number of sentences predominate: 12, 18, 20, 24, 30, 36, 48, 60, 72, 84, 96 and 120 months. These 10 terms account for over 78 percent of sentences issued in 1995 (***275***).

Essentially, these findings confirm what professors Catherine Fitzmaurice and Ken Pease, *The Psychology of Judicial Sentencing*, Manchester University Press (1986), had stated years earlier—that judges increase sentence length apace with what they perceive *inexactly* as greater culpability.

Ostrom and Ostrom contend that the policy implications of conventional number preferences are three. First, strong preferences for certain numbers may result in distinctly different sentences—twelve years vs. fifteen, or fifteen vs. twenty—for *similar* offenders who commit the *same* crimes. Second, this inconsistency can easily become racial disparity if judges consistently impose longer sentences on non–whites. And third, rising pressure to increase sentence length for certain offenders puts heavy pressure on available prison space.

Figure 1 (following page) depicts all prison sentences and terms of extended supervision, from 0–5 years, assigned in Wisconsin courts between February, 2003 and December, 2004. Actual data, drawn from the Consolidated Court Automation Programs (CCAP), are summarized in two tables, *Most Frequent Prison Sentences* and *Most Frequent ES Sentences*, also appearing below.

Figure 1 — Wisconsin Sentence Frequencies, 0–5 Years

The data confirm that Wisconsin judges rely heavily on conventional number preferences, assigning 12, 18, 24, 36, 48, 60, 72 and 120–month sentences more frequently than any other term. (Fifteen and 30–month sentences have been omitted from this list because they form relatively minor peaks.) More importantly, the data reveal that judges have especially strong preferences for certain numbers, assigning five–year sentences, for example, far more often than *any other term* between 48 and 72 months. For the Wisconsin Department of Corrections, which last year spent nearly $28,000 per prisoner, this pattern has serious implications. More and better research on sentence effectiveness is needed to ensure that these most frequent sentences are also optimal for public safety, and if not, to give judges better information about the most effective sentences.

Most Frequent **Prison Sentences** (Graphical Peaks)		
Length	Case Count	% of Prison Sentences
12 mos	1931	16.14%
15 mos	472	3.95%
18 mos	1998	16.70%
24 mos	2343	19.59%
30 mos	499	4.17%
36 mos	1591	13.30%
48 mos	592	4.95%
60 mos	608	5.08%
6 yrs	209	1.75%
7 yrs	119	0.99%
8 yrs	118	0.99%
10 yrs	209	1.75%
12 yrs	52	0.43%
15 yrs	77	0.64%
20 yrs	55	0.46%
25 yrs	30	0.25%
		Cumulative **91.14%**

Most Frequent **ES Sentences** (Graphical Peaks)		
Length	Case Count	% of ES Sentences
12 mos	1087	9.53%
18 mos	959	8.41%
24 mos	2669	23.40%
30 mos	469	4.11%
36 mos	2102	18.43%
48 mos	828	7.26%
60 mos	948	8.31%
6 yrs	230	2.02%
7 yrs	141	1.24%
8 yrs	126	1.10%
10 yrs	223	1.95%
15 yrs	58	0.51%
20 yrs	38	0.33%
		Cumulative **86.60%**